

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.72 OF 2005

Prakash Gopal Patil & Ors.

...Appellants

Vs.

Sudhakar Hari Berde
(since deceased through L.Rs) & Ors.

...Respondents

Mr. D.S.Sawavant for the Appellants
Smt.Skhakuntala Joshi for Respondent No.1-b.

CORAM: A.S.OKA, J.
DATED: MAY 6,2005.

P.C.:

1. Heard Advocates for the parties. The Appeal is by the original Defendant Nos.6 to 8. The Respondent No.1 is the original Plaintiff. The dispute is relating to the land situated at village Uchat, Taluka Shahuwadi, District Kolhapur. The case of the Respondent No.1-Plaintiff is that he was residing at Ulhasnagar and considering the cordial relationship with his uncle Shri Madhukar Narayan Berde he executed a Power of Attorney in favour of his uncle for the purpose of looking after the suit land. The said Madhukar is original defendant No.1 in the suit. The original Defendant No.1 purported to execute a sale deed in favour of the original Defendant No.2 who is son of the Defendant No.1. It appears that the suit property was further transferred by the Defendant No.2. The present Appellants are the original Defendant Nos.6 to 8 who are claiming to be in possession of the suit land. The contention of the original Plaintiff in

the suit is that the original Defendant No.1 was not authorised under Power of Attorney to sell the suit land. The Trial Court decreed the suit partly by directing the present Appellant to deliver the possession of the suit land. An Appeal was preferred in the District Court by the present Appellants as well as by the original Plaintiff. Both the Appeals were heard together and the learned Ad hoc Additional District Judge dismissed both the Appeals.

2. The learned Appellate Court held that the Power of Attorney did not authorise the Defendant No.1 to sell the suit land. The Appellate Court also held that as the Power of Attorney was not executed before the Sub Registrar, the sale deed executed by the Defendant No.1 in favour of the Defendant No.2 could not have been registered in view of the provisions of Indian Registration Act, 1908.

3. Shri Savant, learned Counsel appearing for the Appellants submitted that the Power of Attorney authorised the original Defendant No.1 to do everything in respect of the suit land which the original Plaintiff could have done. He submitted that the sale deed was executed by the Defendant No.1 in his capacity as the Power of Attorney holder. Therefore, the Defendant No.1 being the person executing the document, Section 33 of the said Act of 1908 was not applicable. He placed reliance on decision of this Court reported in A.I.R. (37) 1950 Bombay page No.326 (Ratilal Nathubhai and another

vs. Rasiklal Maganlal and others) in support of his contention.

4. The learned Counsel appearing for the original Plaintiff-Respondent No.1 has supported the impugned Judgment and Decree.

5. A copy of Power of Attorney executed by the original Plaintiff in favour of the Defendant No.1 is placed on record. Perusal of the Power of Attorney shows that the Defendant No.1 was empowered to look after day to day management of the suit land and he was empowered to issue receipts, to appoint the Advocates, to file suits etc. On plain reading of Power of Attorney it appears that as the original Plaintiff was residing away from the suit land, he intended to appoint his uncle i.e. Defendant No.1 to look after the suit land. The recitals show that by no stretch of imagination the Defendant No.1 was empowered to sell the suit land. Therefore there is no error in the finding of the Appellate Court when the Appellate Court considered the Power of Attorney and came to the conclusion that there was no power conferred on the original Defendant No.1 by the said Power of Attorney to sell the suit land. On this ground alone, the impugned Judgment and Decree deserves to be confirmed.

6. In so far as second submission is concerned, it is

obvious that if the Power of Attorney holder of the original owner signs or executes a conveyance in favour of the purchasers he is the person executing the document of conveyance. Therefore, in view of law laid down by the Division Bench of this Court in case of Ratilal (supra) in such a case it was not necessary to get the Power of Attorney executed before the Sub Registrar. Section 33 comes into the operation only when the sale deed is executed by the original owner and the holder of Power of Attorney of the original owner seeks to present the sale deed for registration. In my view, the finding on this aspect recorded by the Appellate Court is contrary to the law laid down by the Division Bench of this Court. However, I have held earlier that the courts below were right in holding that the Defendant No.1 was not empowered to execute a conveyance and no power was conferred on him to execute the conveyance as a power of attorney holder. In view of the confirmation of the said finding, the Appeal must fail as the Appellants who are claiming through the Defendant No.1 cannot claim any right, title or interest in the suit property.

7. Hence, this Appeal cannot be entertained and the same is dismissed with no order as to costs.

Judge.